

1
2
3
4 SAN FRANCISCO HERRING
5 ASSOCIATION, et al.,
6 Plaintiffs,
7 v.
8 PACIFIC GAS AND ELECTRIC
9 COMPANY, et al.,
10 Defendants.

11 Case No. [14-cv-04393-WHO](#)

12
13 **ORDER DEFINING CLAIMS AND
14 SETTING SCHEDULE FOR TRIAL OF
15 THE FIRST PHASE**

16 Re: Dkt. Nos. 63, 65

17
18 In entering the Order Lifting Stay Concerning Known Clarke Property Claims, Dkt. No.
19 63, I directed the parties to meet and confer over the delineation of the Known Clarke Property
20 Claims, on which I lifted a stay, as opposed to the Broader Environmental Claims, which require
21 extensive testing protocols before they can be tried. I also directed the parties to meet and confer
22 about the schedule of the Known Clarke Property Claims for trial. The parties could not reach
23 agreement and submitted a Joint Statement, Dkt. No. 65, which we discussed at some length
24 during the Case Management Conference on August 4, 2015.

25 Counsel for plaintiffs essentially reiterated Clarke's concern that the severance of any
26 claims will prejudice Clarke. I have considered those concerns again and still disagree. As I
wrote before, "[W]hile I recognize the possible overlap between the two categories of claims, I
disagree with Clarke that the remediation of his property will necessarily be insufficient if I sever
the claims. I agree with PG&E that cleanup of a known hazard is environmentally advantageous.
I do not see a potential for inconsistent rulings. If further remediation of the problems affecting
the Clarke property is warranted as determined when the Broader Environmental Claims are
litigated, Clarke will get the benefit of that remediation." Dkt. No. 63, p. 1. Plaintiffs' counsel
conceded during the Case Management Conference that the trial on the Broader Environmental

1 Claims is at least three years away, given the amount of testing that needs to be completed. The
2 Known Clarke Property Claims are ready for discovery and trial now, and the parties have already
3 spent four years attempting but failing to reach agreement. It is time to adjudicate them. And
4 though plaintiffs' counsel argued that it would be a burden for Clarke to prepare for two trials
5 instead of one, that burden will fall primarily on counsel and not Clarke, since the overwhelming
6 bulk of Clarke's claims will have been addressed in the phase one trial. Plaintiff San Francisco
7 Herring Association's claims are severed for the second phase of the trial. There will not be
8 significant overlap in the evidence presented for each phase and there will be no prejudicial
9 burden on either Clarke or his counsel.

10 Accordingly, the first phase of this trial on the Known Clarke Property Claims is limited to
11 the state law claims as they relate to the Clarke Property. These include Counts 4-7 in the
12 Complaint and Clarke's claims for punitive damages that arise from those counts. This phase does
13 not include the Broader Environmental Claims, for which the stay remains in effect. The stayed,
14 phase two claims include all Resource Conservation and Recovery Act claims; all Clean Water
15 Act claims; all claims brought by plaintiff San Francisco Herring Association; all public nuisance
16 claims; and any remaining issues not tried in the first phase of the case.

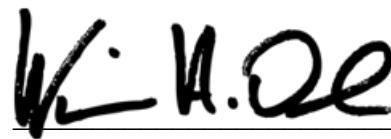
17 Given the lack of discovery to date, I am reinstating the original Trial and Pretrial
18 Schedule, as requested by plaintiffs. It is:

Fact Discovery Cut-Off:	January 15, 2016
Simultaneous Expert Disclosures:	March 1, 2016
Rebuttal Expert Disclosures:	April 1, 2016
Expert Discovery Cut-Off:	May 16, 2016
Last Day to Hear Dispositive Motions:	May 18, 2016
Pretrial Conference:	July 18, 2016
Trial:	August 15, 2016

1 A further Case Management Conference is set for February 16, 2016 at 2:00 p.m.
2

3 **IT IS SO ORDERED.**

4 Dated: August 11, 2015

5 
6

7 WILLIAM H. ORRICK
8 United States District Judge